

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 5268 of 1993

SMT MISIA DEVI
V/S
STATE & ORS

Mr. MC BHOOT, for the appellant / petitioner

Mrs. RR KANWAR, A.G.A. & Mr. PANKAJ BOHRA on behalf of
Mr. RAVI BHANSALI for the respondents.

Date of Order : 11.1.2007

HON'BLE SHRI N P GUPTA, J.

ORDER

By this writ petition, the petitioner seeks to challenge the order of the Board of Revenue, being Annexure 5 and 6, and part of the order Annex.2, whereby the land in question has been allotted to the respondent no. 6. From perusal of the orders Annexure 3, 4 and 6, it does transpire that the matter has been handled on behalf of the petitioner in a thorough reckless manner which has brought about the situation culminating into filing of the present writ petition.

The facts of the case are that vide Annexure-2 dt. 14.2.1977 the Collector allotted certain lands to the respondent no.6 for its extension. This order was challenged by the petitioner by way of filing the appeal before the Revenue Appellate Authority in the year 1985,

the delay was condoned, and it was considered that the petitioner had applied for conversion of the land into Abadi, and that one judgment and decree was passed by the S.D.O. on 30.1.1984 in Revenue Case No. 3025/83, with respect to Khasra No. 65, which decree has not been challenged, and is in force, therefore, the appeal was allowed, and the order Annexure-2 was set aside to the extent of 4 Bigha 4 Biswa land comprised in Khasra No. 65 and 79. Against this order the respondent no. 6 filed second appeal before the Board of Revenue. The Board of Revenue adopted a strange course, by considering that with passing of the order Annexure-2 dt. 14.2.1977 the land ceased to be agricultural land, and therefore, appeal could not be entertained, the appeal filed before the Revenue Appellate Authority was barred, and that compliance of Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes), Rules 1970 was not required to be made, and it was also held, that before passing the order dt. 14.2.1977 it was considered that the petitioner is a trespasser, and the land having been converted, his possession cannot be regularised under the Rules of 1970 either, and therefore, the order was set aside vide Annexure-4. The petitioner filed a review petition against this order, and that has been dismissed by the order Annexure-6.

When the matter came up before this Court in this writ petition, on 15.10.1993 the Division Bench directed

the petitioner to produce the documents of title of the petitioner over the land. It appears that the petitioner contended that the land is of her title, then the documents were filed, but then on 21.1.1994 it was noticed, that the documents are not there, and the office was directed to check, and then further orders were passed. Then, on 18.2.1994, the petitioner was directed to produce further copies of the documents, and status quo was ordered to be maintained. The petitioner accordingly produced documents including Annexure-9 and 10.

A look at Annexure-9 shows, that it is a photo stat copy of the registered sale deed executed by Kader Khan with respect to land measuring 4 Bigha 4 Biswas land, and is dt. 5.5.1975, i.e. of a date, much before the date of the order Annexure-2. Then, Annexure-10 are the revenue records from 2019 onwards, showing the land to be of Kader Khan. At this place it may be observed, that the learned counsel for the petitioner clearly submitted that his writ petition is confined only to 4 Bigha 4 Biswas of land mentioned in Annexure-10 comprised in Khasra No. 65, and he does not lay any claim to the land in Khasra No. 79.

In the above background a look at Annexure-9 and 10 does show, that the land did belong to Kader Khan, who had sold it by duly registered sale deed to the petitioner, and much thereafter the order Annexure-2 had been passed,

which obviously could not be passed, as even under Annexure-8 the Collector had been conceded the power to allot Sivay Chak Government Land, obviously not the land of any one's Khatedari.

I observe about reckless conduct of the case in the earlier part of the order precisely because despite the land being of ownership, and possession of the petitioner, this aspect was not projected before the learned courts below, and reliance was placed only on the proceedings for conversion, and the Revenue Appellate Authority relied upon some proceedings of S.D.O. Court. Be that as it may.

In view of the fact that the Division Bench of this Court in the proceedings of writ itself had directed the petitioner to produce the document of title, and they have been produced, which documents have not been controverted by the respondents, it is not open to me to turn a nelson's eye to these documents, by resting on hyper technicalities.

The net result is that the writ petition is allowed. The impugned order Annexures-4 and 6, so also the order Annexure-2, so far as it relates to the petitioner's land comprising in Khasra No. 65, covered by Annexure-9 and 10 are quashed. The parties shall bear their own costs.

(N P GUPTA), J.